

**Chapter 6.82  
Brownfields Revitalization Act**

**Article 1.  
Legislative Findings and Intent**

**25395.60.** The Legislature finds that:

(a) There are thousands of Brownfield sites in the state where redevelopment has been stymied due to real or perceived hazardous materials contamination. Cleaning up these sites and returning them to productive use will benefit the communities in which they are located and the state as a whole.

(b) Contamination of property in the state has hampered redevelopment, which in turn has limited job creation, economic revitalization, and the full and productive use of the land.

(c) Private developers, local governments, and schools are reluctant to redevelop these properties. Instead, they focus new development at the edges of urban areas, because those areas are generally perceived to pose less complications and liability.

(d) This has resulted in a multitude of problems, including urban sprawl, decaying inner-city neighborhoods and schools, public health and environmental risks stemming from contaminated properties, reduced inner-city tax bases, and an increased need for major infrastructure improvements, such as streets, highways, and sewer systems to service the urban fringe areas while the inner-city infrastructure deteriorates.

**25395.61.** It is the intent of the Legislature in enacting this chapter to:

(a) Establish the cleanup and reuse of Brownfield Sites as a priority of the state, and specifically, the California Environmental Protection Agency;

(b) Relieve innocent purchasers, bona fide prospective purchasers, and owners of property adjacent to contaminated sites of the liability and responsibilities that should be borne by those who caused or contributed to the contamination of the property.

(c) Reduce procedural burden and encourage process efficiencies that continue to ensure cleanups are fully protective of public health and the environment;

(d) Encourage the development and redevelopment of unused or underused urban properties.

**25395.62.** (a) This chapter shall be known, and may be cited as, the "California Brownfields Revitalization Act of 2004."

(b) No provision of this chapter shall limit the authority of any state or local agency in the enforcement or administration of any provision of law that it is specifically permitted or required to enforce and administer.

**Article 2.  
Definitions**

**25395.63.** The definitions set forth in this article shall govern the interpretation of this chapter. Unless the context requires otherwise and except as provided in

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this article, the definitions contained in Article 2 of Chapter 6.8 shall apply to the terms used in this chapter.

**25395.64. "Agency"** means any city, county, district, commission, the state, or any department, agency, or political subdivision thereof, that has jurisdiction under an applicable statute to require, oversee, or approve a response action at a hazardous materials release site.

**25395.65. "All appropriate inquiries"** means reasonable efforts, in accordance with generally accepted good commercial and customary standards and practices, to determine, through investigations into the previous ownership and uses of the facility, whether a release of a hazardous material or discharge of a waste has occurred. One or more of the following activities are considered to meet this definition:

(a) Compliance with the procedures of the American Society for Testing and Materials, including the document known as "Standard E1527-001," entitled "Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process," in the form of the document current at the time of the inquiry.

(b) Compliance with the standards and practices established by the Administrator of the United States Environmental Protection Agency pursuant to Section 101(35)(B)(ii) of the federal act (42 U.S.C. Sec 9601(35)(B)(ii)).

(c) In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a site inspection and title search that does not reveal a basis for further investigation.

**25395.66. "Applicable statute"** means all of the following state laws, but is limited to only those provisions in the state law that imposes liability for response costs on an owner or occupant of property for cleanup of pollution conditions caused by a release of hazardous material on, under, or adjacent to the property:

(a) Title 1 (commencing with Section 3479) of, Title 2 (commencing with Section 3490) of, and Title 3 (commencing with Section 3501) of, Part 3 of Division 4 of the Civil Code.

(b) Chapter 3 (commencing with Section 731) of Title 10 of Part 2 of the Code of Civil Procedure.

(c) Section 5650 of the Fish and Game Code.

(d) Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with Section 25299.10), Chapter 6.8 (commencing with Section 25300) and Chapter 6.10 (commencing with Section 25401) of Division 20 of the Health and Safety Code.

(e) Article 12.5 (commencing with Section 33459) of Chapter 4 of Part 1 of Division 24 of the Health and Safety Code.

(f) Division 7 (commencing with Section 13000) of the Water Code.

**25395.67. "Appropriate care"** means the performance of any response actions with respect to any hazardous materials found at the brownfield site determined by the department or a regional water quality control board to be necessary, the response actions are conducted in accordance with a plan approved by either the department or a regional water quality control board, and the department or a

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regional water quality control board has issued a certificate of completion or other formal notification that the response action has been satisfactorily completed.

**25395.68. "Board"** means the State Water Resources Control Board.

**25395.69. "Bona fide prospective purchaser"** means a person or a tenant of a person who acquires ownership of a brownfield site on or after January 1, 2004, and that establishes all of the following by a preponderance of the evidence:

(a) All disposal or releases of hazardous materials at the brownfield site occurred before the person acquired the site.

(b) The person made all appropriate inquiries into the previous ownership and uses of the brownfield site.

(c) The person provides all legally required notices with respect to the discovery or release of hazardous materials at the brownfield site.

(d) The person exercises appropriate care with respect to hazardous materials found at the brownfield site.

(e) The person provides full cooperation, assistance, and access to persons who are authorized to conduct response actions or natural resource restoration at the brownfield site, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of complete or partial response actions or natural resource restoration at the brownfield site.

(f) The person is in compliance with land use controls established or relied on in connection with an approved response action at the brownfield site and does not impede the effectiveness or integrity of any aspect of any remedy employed at the brownfield site in connection with a response action.

(g) The person complies with all requests for information or administrative subpoena issued by an agency with jurisdiction under an applicable statute.

(h) The person is not potentially liable, or affiliated with any other person who is potentially liable, for response costs at the brownfield site through direct or indirect familial relationship, or contractual, corporate, or financial relationship, other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the brownfield site is conveyed or financed or by a contract for the sale of goods or services, or the result of a reorganization of a business entity that was potentially liable.

**25395.70. "Brownfield Project Sponsor"** is a person that enters into an Environmental Oversight Agreement with the department pursuant to Section 25395.87.

**25395.71. (a) "Brownfield Site"** means real property or properties, the expansion, redevelopment, or reuse of which may be complicated by the presence or perceived presence of hazardous materials.

(b) "Brownfield Site" does not include:

(1) A facility that is listed or proposed for listing on the National Priorities List established under Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sec. 9605);

(2) A site on the list maintained by the department pursuant to Section 25356.

**25395.72. "Department"** means the Department of Toxic Substances Control.

**25395.73. "Endangerment"** means conditions at a site pose a significant risk either of harm to human health or of serious environmental damage unless immediate response action is initiated.

**25395.74. "Hazardous material"** has the same meaning as the term is given in subdivision (d) of Section 25260.

**25395.75. (a) "Innocent landowner"** means any of the following:

(1) A person who made all appropriate inquiries into the previous ownership and uses of the brownfield site at the time the person acquired the property, and did not know and had no reason to know that any hazardous material was released on, in, or at the brownfield site.

(2) A government entity that acquired the property by escheat, or through any other involuntary transfer acquisition, or through the exercise of eminent domain by purchase or condemnation.

(3) A person that acquired the property by inheritance or bequest.

(b) In order to be considered an innocent landowner, the person must also:

(1)(A) Take reasonable steps to prevent any human, environmental, or natural resource exposure to a previously released hazardous material.

(B) For purposes of this section, an innocent landowner's reasonable steps include the following:

(i) \*\*\*\*\*

(ii) \*\*\*\*\*

(2) Provide full cooperation, assistance, and access to persons who are authorized to conduct response actions or natural resource restoration at the brownfield site, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of complete or partial response actions or natural resource restoration at the brownfield site.

(3) Be in compliance with land use controls established or relied on in connection with the response action at the brownfield site and does not impede the effectiveness or integrity of engineering controls employed at the brownfield site in connection with a response action.

(4) Comply with all requests for information or administrative subpoena issued by an agency with jurisdiction under an applicable statute.

(5) Not otherwise be potentially liable, or affiliated with any other person who is potentially liable, for response costs at the brownfield site through direct or indirect familial relationship, or contractual, corporate, or financial relationship, other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the site is conveyed or financed or by a contract for the sale of goods or services, or the result of a reorganization of a business entity that was potentially liable.

**25395.76. "Land use control"** means a recorded instrument executed pursuant to Section 25395.91 that restricts or imposes obligations on the present and future uses or activities on a Brownfield Site, including but not limited to, recorded easements, covenants, restrictions or servitudes, or any combination thereof, as appropriate.

**25395.77. "Regional board"** means a California regional water quality control board.

**25395.78.** “Release” has the same meaning as defined in Section 25320.

**25395.79.** “Response,” “respond,” or “response action” have the same meaning as the terms are given in Section 25323.3 except that “response,” “respond,” and “response action” under this chapter apply to hazardous material as defined in Section **25395.74.** .

### **Article 3 Brownfields Liability**

#### ***[Innocent Landowners]***

**25395.80.** Provided that an innocent landowner has taken all steps described in subdivision (b) of Section 25395.75, the following limits on liability apply:

(1) An innocent landowner is not liable under an applicable statute for claims made by parties other than a government agency for response costs associated with a release or threatened release of a hazardous material at a brownfield site.

(2) An agency may not take any action under an applicable statute to compel an innocent landowner to conduct response action with respect to a hazardous materials release at a brownfield site owned by the innocent landowner unless all of the following conditions apply:

(A)(1)The agency has taken all reasonable attempts to compel necessary response action from all other potentially responsible parties and those efforts have been unsuccessful or

(2) The agency determines that no viable potentially responsible party exists for the brownfield site.

(B) The conditions on the innocent landowner’s property pose a threat to tenants or occupants of the property.

#### ***[Bona Fide Prospective Purchasers]***

**25395.82.** (a) Provided that a bona fide prospective purchaser of a brownfield site has met all of the conditions specified in Section 25395.69, a bona fide prospective purchaser is not liable under an applicable statute for claims made by parties other than a government agency for response costs associated with a release or threatened release of a hazardous material at a brownfield site.

(b) Notwithstanding any other provision of law or authority under which the bona fide prospective purchaser has performed appropriate care and except as provided in subdivision (c), the department or regional board may not take any action under an applicable statute to compel the bona fide prospective purchaser or a subsequent property owner to conduct additional response action with respect to a hazardous materials release at a Brownfield Site unless all of the following conditions apply:

(1)(A)The department or regional board has taken all reasonable attempts to compel additional response action from any other potentially responsible parties and those efforts have been unsuccessful or

(B) The department or regional board determines that no viable potentially responsible party exists for the brownfield site.

(2) The conditions on the Brownfield Project Sponsor's property pose a threat to tenants or occupants of the property.

(c) This section does not modify or limit the existing authority of a state or local agency to impose a condition on the issuance of a discretionary permit relating to the development, use, or occupancy of any brownfield site.

***[Owners of Contiguous Property]***

**25395.83.** (a) Provided that an owner of contiguous property has taken all steps described in paragraph (c), an agency may not take any action under any applicable statute to compel an owner of contiguous property to conduct additional response action with respect to a hazardous materials release at a brownfield site owned by the owner of contiguous property unless all of the following conditions apply:

(1)(A) The agency has taken all reasonable attempts to compel necessary response action from all other potentially responsible parties and those efforts have been unsuccessful or

(B) The agency determines that no viable potentially responsible party exists for the brownfield site.

(2) The conditions on the property pose a threat to tenants or occupants of the property.

(b) A person who owns real property that is contiguous to, or otherwise similarly situated with respect to, and that is or may be, contaminated by a release or threatened release of a hazardous material from real property that is not owned by that person is not liable under an applicable statute for response costs associated with the release or threatened release if the person demonstrates, by a preponderance of the evidence all of the following:

(1) The person did not cause, contribute, or consent to the release or threatened release.

(2) The person is not potentially liable, or affiliated with a person who is potentially liable, for response costs at a brownfield site through one or more of the following:

(A) A direct or indirect familial relationship.

(B) A contractual, corporate, or financial relationship, other than a contractual, corporate, or financial relationship that is created by a contract for the sale of goods or services.

(C) A reorganization of a business entity that was potentially liable.

(c) To qualify for the release from liability described in paragraphs (a) and (b), the owner of contiguous property must do all of the following:

(1)(A) Take reasonable steps to prevent or limit human, environmental, or natural resource exposure to hazardous material released on or from property owned by that person.

(B) For purposes of this section, an owner of contiguous property's reasonable steps include the following:

(i) \*\*\*\*\*

(ii) \*\*\*\*\*

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(2) Provide full cooperation, assistance, and access to persons who are authorized to conduct response actions or natural resource restoration at the brownfield site from which there has been a release or threatened release, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of a complete or partial response action or natural resource restoration at the brownfield site.

(3) Comply with any land use control established or relied on in connection with the response action at the brownfield site, and does not impede the effectiveness or integrity of any aspect of any remedy employed in connection with a response action at the brownfield site.

(4) Comply with any request for information or administrative subpoena issued by an agency with jurisdiction under an applicable statute.

(5) Provide all legally required notices with respect to the discovery or release of hazardous materials at the brownfield site.

(6) Have conducted all appropriate inquiry with respect to the property at the time the person acquired the property, and not know or have reason to know that the property was or could be contaminated by a release or threatened release of hazardous material from other real property not owned or operated by the person.

(d) With respect to a hazardous material from one or more sources that are not on the property of a person who is a contiguous property owner that enters groundwater beneath the property of the person solely as a result of subsurface migration in an aquifer, subdivision (1) of paragraph (c) of does not require the person to conduct groundwater investigations or to install groundwater remediation systems, except in accordance with any regulation, policy, or guidance adopted by an agency with jurisdiction under an applicable statute.

(e) This section does not limit a defense to liability that may be available to the person under any other provision of state law, and this section does not impose liability on the person that is not otherwise imposed by an applicable statute.

(f) This section does not modify or limit the existing authority of a state or local agency to impose a condition on the issuance of a discretionary permit relating to the development, use, or occupancy of a brownfield site.

**25395.83.** (a) The limitations provided in Sections 25395.80, 25395.81 and 25395.82 become effective on the date this Chapter goes into effect, and do not apply to properties transactions or activities that occurred prior to its effective date.

(b) The limitations provided in Sections 25395.80, 25395.81 and 25395.82 are in addition to, and do not otherwise affect, other protections provided under state law.

***[Lien Provisions]***

**25395.84.** If there are unrecovered response costs incurred by an agency with jurisdiction under an applicable statute at a brownfield site for which an owner of the site is not liable as a bona fide prospective purchaser, the agency shall have a lien on the site, or may by agreement with the owner, obtain from the owner a

lien on other property or other assurance of payment for the unrecovered response costs, subject to all of the following:

(a) A response action for which there are unrecovered costs of the lead agency is carried out at the brownfield site.

(b) The response action increases the fair market value of the brownfield site above the fair market value of the brownfield site that existed before the response action was initiated.

(c) The lien shall arise at the time at which costs are first incurred by the agency with respect to a response action at the brownfield site.

(d) The lien amount may not exceed the increase in fair market value of the property attributable to the response action at the time of a sale or other disposition of the property.

(e) The lien shall continue until the earlier of satisfaction of the lien by sale or other means, or recovery of all response costs incurred by the agency at the brownfield site.

(f) The lien shall be subject to the rights of a purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable state law before notice of the lien has been filed in the appropriate office within the state or county or other governmental subdivision, as designated by state law. That purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien as are afforded under state law against a judgment lien that arises out of an unsecured obligation and that arises as of the time of the filing of the notice of the lien. The notice shall be recorded in the official records of the County Recorder's office for the county in which the real property is located. For purposes of this subdivision, the terms "purchaser" and "security interest" shall have the definitions provided under Section 6323(h) of Title 26 of the United States Code.

***[Liabilities not exempted]***

**25395.85.** This chapter does not exempt the following:

(a) A person from liability for bodily injury or wrongful death.

(b) A person from any requirement imposed under Chapter 6.5 (commencing with Section 25100) of the Health and Safety Code, including corrective action, closure and postclosure requirements.

**25395.86.** (a) Nothing in this chapter limits any defense to liability that may be available to the person under any other provision of law or imposes liability on the person that is not otherwise imposed by this chapter or an applicable statute.

(b) Nothing in this chapter limits the authority of an agency to take those actions it determines are necessary to contain or eliminate an endangerment that requires immediate action in order to protect public health and safety or the environment pursuant to an applicable statute.

**Article 4.  
Environmental Oversight Agreements**

**25395.87.** (a) Except as provided in subdivision (c), the department or a regional board may enter into an agreement with any person for consultation or oversight of site assessments or response actions at one or more Brownfield Sites.

(b)(1) The Brownfield Project Sponsor shall submit to the department or a regional board sufficient information for the department or a regional board to determine whether the site is a Brownfield Site and to prepare an agreement.

(2) The Brownfield Project Sponsor shall demonstrate to the department or a regional board that the Brownfield Project Sponsor owns or otherwise has sufficient control over the Brownfield Site to conduct a site assessment or response action and to provide access to the Brownfield Site for the purposes of any necessary oversight activities.

(c) The parties to the agreement may withdraw from an agreement by providing adequate written notice to the other party prior to withdrawing. Prior to withdrawing from an agreement under this section, a Brownfield Project Sponsor shall do both of the following:

(1) Reimburse the department or a regional board for its incurred costs; and

(2) Demonstrate to the satisfaction of the department or regional board that conditions at each Brownfield Site to which the agreement applies do not endanger public health and safety or the environment.

(d) A Brownfield Project Sponsor that enters into an agreement with the department or a regional board is responsible for all costs the department or regional board incurs for activities conducted pursuant to the agreement.

(e)(1) For the purposes of providing a Brownfield Project Sponsor with sufficient information to decide to enter into an agreement under this chapter, the department or regional board will provide to the person entering into an agreement under this chapter an estimate that includes all of the following information:

(A) A description of the work to be performed or services to be provided.

(B) The estimated billing rates for all classes of employees expected to perform work under the agreement.

(C) An estimate of the charges to be billed under the agreement, to the extent the department or regional board can project its time and costs in advance.

(2) The department or regional board may adjust this estimate based on an analysis of new information that supports the adjustment, including, but not limited to, a change in the scope of the original work, additional work that is needed to ensure protection of human health or safety or of the environment, or other circumstances that arise that require substantially more time and effort than was originally anticipated to complete the work. Before adjusting the estimate, the department or regional board will provide written notice to the Brownfield Project Sponsor that is party to the agreement.

(f) Agreements entered pursuant to this chapter shall be exempt from the requirements of the Public Contract Code for oversight, review or approval by the Department of General Services.

(g) Actions to recover any response costs incurred by the department or a regional board for work performed or services provided in connection with a Brownfield Site under this chapter shall be commenced by the Attorney General, upon the request of the department or a regional board, against the persons responsible for the department's or regional board's incurred costs.

(h) To facilitate informal discussion and information sharing, and, to the extent that funding to reimburse the department's or regional board's costs is available for this purpose, the department or a regional board may provide initial consultation services for one or more Brownfield Sites prior to entering into an agreement.

(i)(1) The following persons are not eligible to enter into an agreement under this chapter:

(A) A person who has been convicted of a felony involving the regulation of hazardous materials, including but not limited to, a conviction of a felony under Section **25395.13**;

(B) A person that is in violation of an administrative order or agreement issued by or entered into with any federal, state, or local agency that requires site assessment or response action at a site or a judicial order or consent decree that requires site assessment or response action at a site;

(C) A person that has engaged in gross negligence with respect to site assessment or response action at a site that causes endangerment of public health and safety or the environment;

(D) A person that obtains or seeks to obtain an approval or other determination from the department or a regional board by fraud, negligent or intentional nondisclosure, or misrepresentation.

(2) If the department or a regional board determines that a person described in (A) through (D) above has entered into an agreement under this chapter, the department or regional board shall terminate the agreement.

## **Article 5**

### **Brownfields Response Actions**

**25395.88.** (a) The purpose of a site assessment conducted under this Chapter is to assess, monitor and evaluate a release or threatened release of hazardous materials at a Brownfield Site to determine or evaluate any one or more of the following:

(1) If a release of hazardous materials has occurred at the Brownfield Site;

(2) If a release or threatened release at the Brownfield Site poses a risk to public health and safety or the environment, including risk to water quality;

(b) A site assessment conducted under this Chapter shall include:

(1) An opportunity for the public to participate meaningfully in decisions regarding the site assessment;

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(2) Adequate characterization of the hazardous materials released or threatened to be released and documentation of the findings;

(3) A Site Assessment Plan submitted by the Brownfield Project Sponsor for the department's or regional board's review and approval. Site Assessment Plans shall include reasonably available information about the Brownfield Site, including sampling and analysis if appropriate, a preliminary evaluation of risks posed by the hazardous materials released or threatened to be released, and any other information the department or regional board determines is necessary.

(c) The department or regional board will evaluate the adequacy of the Site Assessment Plan to ensure the Plan contains all necessary information.

(d) Upon finding that the Site Assessment Plan is adequate, the department or regional board will approve the Site Assessment Plan and provide notification to appropriate persons.

**25395.89.** (a) A response action conducted under this chapter shall include:

(1) An opportunity for the public to participate meaningfully in decisions regarding the response action;

(2) Adequate characterization of the hazardous materials released or threatened to be released and documentation of the findings;

(3) A Response Action Plan submitted by the Brownfield Project Sponsor for the department's or regional board's review and approval. Response Action Plans shall contain the following:

(A) A summary of activities conducted to determine the extent of contamination at the Brownfield Site and an assessment of potential health risks from exposure to hazardous materials and environmental impacts;

(B) Identification of reasonably anticipated future land uses of the Brownfield Site;

(C) A description of the techniques and methods to be used in excavating, storing, handling, transporting, treating, and disposing of any hazardous materials or environmental media contaminated with hazardous materials;

(D) A description of methods that will be employed during the response action to ensure the health and safety of workers and protection to the public and the environment;

(E) A contingency plan that can be implemented to control any endangerment that occurs during the response action at the Brownfield Site;

(F) Details regarding any proposed land use control;

(G) An analysis of the feasibility of the proposed response action;

(H) An analysis and certification of how the response action complies with federal, state, and local statutes, regulations and ordinances, including the California Environmental Quality Act (Public Resources Code section 21000 et seq.);

(I) A description of how the public has been involved to date and is to be involved as the response action proceeds;

(J) Any other information the department or regional board determines is necessary.

(b) The department or regional board will evaluate the adequacy of the Response Action Plan to ensure:

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- (1) The plan contains the details and analysis outlined in subdivision (a);
- (2) The response action when fully implemented will place the Brownfield Site in a condition that allows it to be permanently used for its reasonably anticipated future land use without any significant risk to human health or the environment;
- (3) Public comments and concerns have been adequately addressed;
- (4) If a presumptive cleanup approach is being proposed as the preferred remedy in a Response Action Plan, the presumptive cleanup approach will adequately address the conditions at the Brownfield Site;
- (c) Upon finding the Response Action Plan is adequate according to subdivision (b), the department or regional board will approve the Response Action Plan and provide notification to appropriate persons.

(d) The department or regional board may specify requirements for any long-term operation and maintenance, including land use controls and engineering controls, when included in a Response Action Plan. In approving a Response Action Plan pursuant to subdivision (c), the department or regional board may specify as conditions of approval additional requirements with which the Brownfield Project Sponsor must comply in carrying out the Response Action Plan.

**25395.90.** (a) To the extent consistent with the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the department or a regional board may exclude any portion of a response action conducted entirely on a Brownfield Site from the hazardous waste facility permit requirements of Section 25201 and the waste discharge requirements of Article 4 of Chapter 4 of Division 7 of the Water Code (Section 13260 et. seq.) if both of the following apply:

(1) The response action is carried out pursuant to an approved Response Action Plan prepared pursuant to Section 25395.89.

(2) The Response Action Plan specifies that the response action will be in conformance with the standards, requirements, criteria, or limitations applicable to the construction, operation, and closure of the type of facility at the Brownfield Site and with any other condition imposed by the department or regional board as necessary to protect public health and safety and the environment.

**25395.91.** (a) A Response Action Plan may include land use controls that impose appropriate conditions, restrictions and obligations on land use or activities when hazardous materials will remain at levels that are not suitable for unrestricted use of the land.

(b) If the department or a regional board approves a Response Action Plan that includes land use controls, the land use controls shall be executed by the land owner and recorded by the land owner in the office of the county recorder in each county in which all, or a portion of, the land is located within 10 days of the date of execution. An approved Response Action Plan that requires the use of land use controls will not be issued a site certification until the department or regional board is in receipt of a copy of the recorded land use control. If the land that requires a land use control does not have an owner, or the department or regional board determines the owner is incapable of executing a binding land use control as required by this section, the department or a regional board is

authorized to record in the county records a “Notice of Land Use Restriction” that has the same binding effect as any other land use control executed pursuant to this section, and that will likewise be subject to the variance and termination procedures specified in subdivision (e).

(c) Notwithstanding any other provision of law, a land use control executed pursuant to this section and recorded so as to provide constructive notice runs with the land from the date of recordation, is binding upon all of the owners of the land, and their heirs, successors and assignees and the agents, employees, or lessees of the owners, heirs, successors and assignees, and is enforceable by the department or regional board pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5.

(d) Notwithstanding any other provision of law, a land use control executed pursuant to this section is subject to the provisions of Section 57012.

(e) Land use controls are subject to the variance or removal procedures specified in Sections 25233 and 25234.

**25395.92.** (a) If the department or a regional board determines that the Brownfield Project Sponsor has satisfactorily completed a response action in accordance with an approved Response Action Plan, the department or regional board may issue a Certificate of Completion.

(b) The department or regional board may issue a Certificate of Completion to a Brownfield Project Sponsor when a Response Action Plan includes long-term obligations that have not been completed, including operation and maintenance requirements or monitoring, if the department or regional board determines the following conditions are met:

(1) All other response actions that are necessary to respond to the release have been satisfactorily completed;

(2) The Brownfield Project Sponsor has developed an adequate long-term operation and maintenance plan and demonstrated initial compliance of the system with the plan;

(3) The Brownfield Project Sponsor has provided financial assurance demonstrating that sufficient funds are available to fund the implementation of the operation and maintenance plan and the department's or regional board's costs to monitor performance of the Brownfield Project Sponsor and the effectiveness of the operation and maintenance plan, for the period of time the operation and maintenance plan will be in effect.

(c) If the department or a regional board determines that long-term operation and maintenance is required, the department or regional board may enter into an operation and maintenance agreement with the Brownfield Project Sponsor that governs the long term operation and maintenance activities.

**25395.93.** (a) A Brownfield Project Sponsor that receives a Certificate of Completion pursuant to Section 25395.92 is not liable under Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with Section 25299.10), or Chapter 6.8 (commencing with Section 25300), of Division 20 of this code, or any other state or local law providing liability for remedial or removal actions for releases of

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hazardous substances for any additional response actions regarding the release or threatened release identified in the Response Action Plan approved pursuant to Section 25395.89.

(b) Notwithstanding the provisions of subdivision (a), the department or a regional board may require additional response actions at a Brownfield Site if the department or regional board determines that any one or more of the following conditions exist:

(1) Monitoring, testing, or analysis of the property subsequent to the issuance of the Certificate of Completion indicates that the response action standards and objectives were not achieved or are not being maintained.

(2) One or more of the conditions, restrictions, or limitations imposed on the property as part of the response action or Certificate of Completion are violated.

(3) Site monitoring or operation and maintenance activities that are part of the approved response action or Certificate of Completion for the Brownfield Site are not adequately funded or are not properly carried out.

(4) A hazardous materials release is discovered at the Brownfield Site that was not the subject of the site investigation and response action for which the Certificate of Completion was issued.

(5) A material change in the facts known to the department or regional board at the time the Certificate of Completion was issued, or new facts, cause the department or regional board to find that further investigation and remedial action are required in order to prevent a significant risk to human health and safety or to the environment.

(6) A Brownfield Project Sponsor induced the department or regional board to issue the Certificate of Completion by fraudulent, negligent or intentional nondisclosure of information or misrepresentation.

(c) Notwithstanding any Agreement entered into under this chapter or Certificate of Completion issued pursuant to this chapter, if the department or regional board determines that a person exacerbated or contributed to existing contamination at a Brownfield Site, the person is a responsible person under Chapter 6.8 (commencing with section 25300) and is subject to the requirements of that chapter.

(d) Notwithstanding subparagraphs (4) and (5) of subdivision (b) of this section, provided that a Brownfield Project Sponsor that receives a Certificate of Completion pursuant to Section 25395.92 or a subsequent property owner is in compliance with all conditions described in the Certificate of Completion, including land use controls established or relied on in connection with an approved response action and Certificate of Completion, the department or regional board may not take any action under any applicable statute to compel the Brownfield Project Sponsor or a subsequent property owner to conduct additional response action with respect to a hazardous materials release at the Brownfield Site unless all of the following conditions apply:

(1)(A) The department or regional board has taken all reasonable attempts to compel necessary response action from all other potentially responsible parties and those efforts have been unsuccessful or

(B) The department or regional board determines that no viable potentially responsible party exists for the brownfield site.

(2) The conditions on the Brownfield Project Sponsor's property pose a threat to tenants or occupants of the property.

(e) A person that enters into an Agreement under this chapter does not become liable under any other provision of law merely by entering into the Agreement.

## **Article 6. Grants and Funding**

**25395.94.** To the extent that funding is provided for these purposes by the legislature, or from federal grant funds or other sources, the department or regional board may establish and implement one or both of the following: a site assessment grant program and a program for funding the department's or a regional board's oversight costs for qualifying projects, in accordance with the terms of the funding provided for these purposes.

## **Article 7. Agency Coordination**

**25395.95.** (a) Pursuant to procedures developed by the department and the Board, the department will provide information to the Board and the regional boards on a quarterly or more frequent basis regarding projects that are being considered for state regulatory oversight by the department pursuant to this chapter.

(b) The department and Board will maintain information on sites that are receiving oversight under the provisions of this chapter and shall make this information available through its web page.

(c) A response action undertaken pursuant to this Chapter shall be overseen by only one of the following:

(1) The department.

(2) A Regional Board.

(d) Cal/EPA shall develop guidelines for specifying the appropriate oversight agency. The guidelines shall include procedures by which the regulatory oversight by the department or a Regional Board are to address the interests and concerns of the others so as to eliminate the need for the other to be directly involved in the regulatory oversight of any Brownfield site.

(e) The department and Board will pursue agreements with other appropriate local, state and federal regulatory agencies to provide assurances that when a certificate of completion is issued under this chapter, the interests and concerns of those agencies have been met as well. Such other appropriate agencies shall include, but need not be limited to, Certified Unified Program Agencies and the federal Environmental Protection Agency;

**Additional coordination items for discussion:**

- Establish a Cleanup Coordination Red Team to assist in coordination of DTSC and Regional Board cleanup efforts
- Develop a single data system for tracking brownfield and other cleanup activities (if resources become available)
- Clarify CEQA requirements related to cleanups
- Address the discrepancy between DTSC's and the Regional Boards' overhead/indirect rate discrepancy
- Ensure that all investigations and cleanups address both water and health concerns
- Gather information on local government's role in directing cleanups

**Article 8  
Guidance and Regulations**

**25395.96.** (a) The department and Board may adopt, and revise when appropriate, regulations to implement this chapter, including procedures, standards and criteria for site assessments and response actions conducted under this chapter. The department and Board may adopt the regulations as emergency regulations pursuant to Section 11346.1 of the Government Code. (b) The department and Board shall develop, where appropriate, policies, guidance, fact sheets and other information documents to facilitate the objectives of this chapter.

**Article 9  
Retention of Authorities**

**25395.97.** If the department or a regional board determines that an endangerment exists at any Brownfield Site that requires immediate action in order to protect public health and safety or the environment, the department or a regional board may take those actions it determines are necessary to contain or eliminate the endangerment pursuant to Chapter 6.5 (commencing with Section 25100) or Chapter 6.8 (commencing with Section 25300) of the Health and Safety Code, or Division 7 (commencing with Section 13000) of the Water Code.

**25395.98.** Except as otherwise specifically provided, nothing in this chapter affects the authority of the department or a regional board to issue orders or take other action under any provision of law to protect public health and safety or the environment. Except as otherwise specifically provided, nothing in this chapter affects the authority of the department, a regional board or any other public

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agency to pursue any existing legal, equitable or administrative remedies pursuant to state or federal law. Except as otherwise specifically provided, the provisions of Chapter 6.8 (commencing with Section 25300) of the Health and Safety Code and Division 7 (commencing with Section 13000) of the Water Code do not apply to implementation of this chapter.

### **Amendment of existing provisions:**

#### ***[Land Use Controls]***

**Health and Safety Code section 57012 is amended to read:**

....

(e) . Any hazardous waste easement covenant, restriction or servitude, or any combination thereof, as appropriate, or any recorded land use restriction executed pursuant to Section 25200, 25200.10, 25202.5, 25222.1, 25229, 25230, 25355.5, 25395.91, or 25398.7 of the Health and Safety Code, or pursuant to Section 13307.1 of the Water Code, or pursuant to one or more of these sections in conjunction with Section 1471 of the Civil Code shall be exclusively for the purpose of protecting the public health and safety or the environment and shall convey no interest in real or other property to the state, and Title 5 (commencing with Section 880.020) of Part 2 of Division 2 of the Civil Code does not apply. Any easement, covenant, restriction or servitude, or any combination thereof, as appropriate, or any recorded land use restriction executed pursuant to Section 25200, 25200.10, 25202.5, 25222.1, 25229, 25230, 25355.5, 25395.91, or 25398.7 of the Health and Safety Code, or pursuant to Section 13307.1 of the Water Code, or pursuant to one or more of these sections in conjunction with Section 1471 of the Civil Code and held by the department or a regional board shall not be sold or otherwise transferred to another person. Any easement, covenant, restriction or servitude, or any combination thereof, as appropriate, or any recorded land use restriction executed pursuant to Section 25200, 25200.10, 25202.5, 25222.1, 25229, 25230, 25355.5, 25395.91, or 25398.7 of the Health and Safety Code, or pursuant to Section 13307.1 of the Water Code, or pursuant to one or more of these sections in conjunction with Section 1471 of the Civil Code is applicable to and directly enforceable against all holders of a fee interest, possessory interest, mineral rights or any other interest granting a right of access, occupancy or the right to make improvements to or take profits from the land. Any easement, covenant, restriction or servitude, or any combination thereof, as appropriate, or any recorded land use restriction executed pursuant to Section 25200, 25200.10, 25202.5, 25222.1, 25229, 25230, 25355.5, 25395.91, or 25398.7 of the Health and Safety Code, or pursuant to Section 13307.1 of the Water Code, or pursuant to one or more of these sections in conjunction with Section 1471 of the Civil Code may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse

possession, prescription, abandonment, waiver, or lack of enforcement, or any similar doctrine.

**Section 13307.1 of the Water Code is amended to read:**

13307.1. (a) The state board and the regional boards shall not consider cleanup or site closure proposals from the primary or active responsible discharger, issue a closure letter, or make a determination that no further action is required with respect to a site subject to a cleanup or abatement order pursuant to Section 13304, unless all current record owners of fee title to the site of the proposed action have been notified of the proposed action by the state board or regional board.

(b) The state board and regional boards shall take all reasonable steps necessary to accommodate responsible landowner participation in the cleanup or site closure process and shall consider all input and recommendations from any responsible landowner wishing to participate.

(c) In addition to the requirements of subdivision (a), if the state board or the regional board finds that the property is not suitable for unrestricted use and that a land use restriction is necessary for the protection of public health, safety or the environment, then the state board and the regional boards may not issue a closure letter, or make a determination that no further action is required, with respect to a site that is subject to a cleanup or abatement order pursuant to Section 13304 and that is not an underground storage tank site, unless a land restriction is recorded or required to be recorded pursuant to Section 1471 of the Civil Code. A land use restriction so recorded or required shall comply with the requirements in subdivision (e) of Section 57012 of the Health and Safety Code.

***[Removal Actions under Chapter 6.8]***

**Health and Safety Code Section 25328 is added to read:**

25328. “Time critical removal action” is a removal action designed to quickly eliminate significant risk from a release or potential release at a site and the removal action must be initiated within six months. Time critical removal actions may involve dangerous concentrations of acutely toxic substances, threat of rapid or widespread off-site migration, likelihood of fire or explosion, acute threat to human health or the environment, or similar situations.

**Health and Safety Code Section 25356.1, subdivision (h)(1) is amended to read:**

....

(h) (1) (A) This section does not require the department or a regional board to prepare a remedial action plan if conditions present at a site present an imminent or substantial endangerment to the public health and safety or to the environment or, if the department, a regional board, or a responsible party takes a removal action at a site and the estimated cost of the removal action is less than one two

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million dollars (~~\$1,000,000~~\$2,000,000). Except as provided in subparagraph (B), the ~~The~~ department or a regional board shall prepare or approve a removal action work plan for all sites where a ~~nonemergency~~ removal action is proposed and where a remedial action plan is not required. For sites where removal actions are planned and are projected to cost less than ~~one~~ two million dollars (~~\$1,000,000~~\$2,000,000), the department or a regional board shall make the local community aware of the hazardous substance release site and shall prepare, or direct the parties responsible for the removal action to prepare, a community profile report to determine the level of public interest in the removal action. Based on the level of expressed interest, the department or regional board shall take appropriate action to keep the community informed of project activity and to provide opportunities for public comment which may include conducting a public meeting on proposed removal actions.

(B) Preparation of removal action work plans and community profile reports are not required for emergency actions taken under Section 25354 or for time critical removal actions. A time critical removal action may be conducted if the department or a regional board determines, based on the urgency and threat of a release or potential release, that a removal action is appropriate and must be initiated within six months.

....

### **Additional Items for Discussion:**

- Amend Site Designation process to:
  - Allow requests from redevelopment agencies, SB 32 local agencies, bona fide prospective purchasers and DTSC or regional boards
  - Streamline process
  - Develop guidelines for establishing advisory committees
- Tax increment – Allocate increment of increased property tax revenue generated by a developed brownfield to the local or state governmental entity that expends funds to clean up the brownfield (up to the amount expended).
- State Brownfields tax incentive (to parallel federal provisions) - Make environmental cleanup costs fully deductible from State taxes in the year they are incurred, rather than having to be capitalized (Note: the federal incentive expires 12/31/03)